



Comptroller General
of the United States

1231612

Washington, D.C. 20548

Decision

Matter of: Webb Electric Company of Florida, Inc.

File: B-258792

Date: December 6, 1994

DECISION

Webb Electric Company of Florida, Inc. protests the Department of the Air Force's decision, after bid opening but before award, to permit the Keal Corporation to correct a mistake in its bid under invitation for bids (IFB) No. F05604-94-B-A008, issued by the agency for repairs to the base power supply at Peterson Air Force Base, Colorado.

We dismiss the protest.

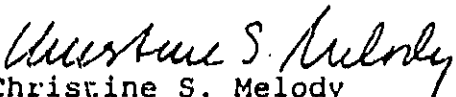
The agency received six bids by the March 28, 1994, bid opening date; Keal's bid of \$514,120 was the low bid. In a letter dated March 29, Keal informed the agency that its bid contained an error and requested an upward adjustment of \$23,406 to its bid price. The agency reviewed Keal's request and on June 9, awarded the contract to Keal at its corrected bid price of \$537,526. The agency published notice of the award of the contract to Keal at its corrected bid price in the Commerce Business Daily (CBD) on June 30. Webb filed this protest on October 5.

Under our Bid Protest Regulations, protests such as Webb's must be filed no later than 10 working days after the protester knew, or should have known, of the basis for protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1994); Technical Co. Inc., B-233213.2, Feb. 26, 1990, 90-1 CPD ¶ 222. To ensure that the timeliness requirements are met, a protester has the affirmative obligation to diligently pursue the information that forms the basis for its protest. Horizon Trading Co., Inc.; Drexel Heritage Furnishings, Inc., B-231177; B-231177.2, July 26, 1988, 88-2 CPD ¶ 86.

Webb does not dispute that it had actual knowledge of Keal's uncorrected bid price.¹ Further, the publication in the CBD of the award placed Webb on constructive notice of the fact that award was made at a price higher than Keal's original bid. See Burgmaster Div., Houdaille Indus., Inc., B-211636, May 12, 1983, 83-1 CPD ¶ 505 (protesters are charged with constructive notice of CBD announcements). While the CBD notice did not explain the difference between the bid and award prices, at a minimum, the price discrepancy triggered the protester's duty to seek further information regarding the basis for the difference in price. See East Carolina Builders, B-243926, June 10, 1991, 91-1 CPD ¶ 559. Rather than requesting an explanation for the price difference at that time, however, Webb waited more than 2 months after the CBD announcement was published to request information from the agency concerning the award. Webb argues that its protest is timely because it was filed within 10 days from September 26, when it received information from the agency concerning Keal's bid correction. We disagree.

Since the June 30 CBD announcement placed Webb on notice that the contract was awarded to Keal at a higher price than the awardee's original bid, by waiting more than 2 months to request information from the agency explaining the basis for the price discrepancy, Webb failed in its duty to diligently pursue information that reasonably would be expected to reveal whether a protest basis existed. Id. Consequently, Webb's protest, filed in our Office on October 5, more than 3 months after publication in the CBD of the notice of the award to Keal at its corrected bid price, is untimely and will not be considered.

The protest is dismissed.


Christine S. Melody
Assistant General Counsel

¹In a sworn affidavit, Webb's President states that Webb reviewed Keal's bid at bid opening and that it later received a copy of Keal's bid "which reflected Keal's bid in the amount submitted at the bid opening."